

## ABA submission

Parliamentary Joint Committee on Corporations and Financial Services' inquiry into the financial services regulatory framework in relation to financial abuse

21 June 2024

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## Introduction

The Australian Banking Association (**ABA**) appreciates the opportunity to make this submission to the Parliamentary Joint Committee on Corporations and Financial Services' inquiry, into the financial services regulatory framework in relation to financial abuse.

Financial abuse is an insidious form of family violence that negatively impacts a person financially and undermines their ability to be economically independent. Financial abuse isolates the victim survivor and can make it extremely difficult for victim survivors to escape from these situations. Financial abuse occurs in many different forms and can affect anyone. It can be challenging for a bank to know if someone is being affected by financial abuse or whether they are a perpetrator of it.

Banks recognise they have an important role in helping both employees and customers impacted by financial abuse.

This submission will outline the role of industry self-regulatory frameworks and consider some of the challenges banks have when assisting customers impacted by financial abuse.

## Banking industry practice

Banks have taken a lead role in identifying and assisting customers impacted by financial abuse. Over the past few years, Australian banks have worked as a sector and in partnership with financial counsellors, community legal services, the domestic and family violence advocacy sector, organisations representing older persons and Government to develop measures that seek to minimise the harm caused to individuals experiencing financial abuse.

The ABA and banks have:

- developed best-practice industry guidance for working with customers experiencing financial abuse, including family and domestic violence and elder abuse,
- implemented preventative measures which block abusive transactions in banking applications and internet banking and take action against perpetrators of this abuse including sending warning letters, limiting their access to internet banking and closing their accounts,
- worked with Government and regulators to minimise the harm to victim survivors by suppressing credit reporting information in situations where the risk of retaliation is higher,
- successfully advocated for AUSTRAC to change guidance to make it easier for victim survivors to open new (and private) accounts using alternative identification documents when gaining access to their documents is not possible,
- committed that where a bank is made aware that a customer's debt involved family and domestic violence the debt will not be sold to a debt buyer. If a debt has been sold to a debt buyer and the bank becomes aware that the debt involved family and domestic violence, the bank will work with the debt buyer to provide the best outcome for the customer. This may include repurchasing the debt<sup>1</sup>,
- partnered with organisations representing older Australians to raise awareness of elder abuse and advocate for harmonisation of, and a national register for, powers of attorney arrangements,
- provided an ABA version of the CBA developed *Safe & Savvy* guide<sup>2</sup>, which includes information, resources, and practical activities to help individuals better understand and prevent elder financial abuse. The resource is available to all banks and their customers,
- developed an overview for financial counsellors and caseworkers of how banks support and communicate with residents that are not their customers, including tenants and family members,

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<sup>1</sup>

Industry Guideline: Sale of unsecured debt available at <https://www.ausbanking.org.au/guidelines/>

<sup>2</sup> Available at <https://www.ausbanking.org.au/wp-content/uploads/2021/06/Safe-and-Savvy-Guide-2024-June.pdf>

during the foreclosure process. Supporting victim survivors of FDV was the catalyst for developing this guidance<sup>3</sup>;

- provided funding for financial abuse prevention and support for example industry provided a significant donation to the Financial Counselling Foundation, a proportion of which was used to fund 10 Family Violence Women's Legal Centre initiatives<sup>4</sup>, and
- partnered with community organisations to address the long-term impacts of family violence and financial abuse on the community.

All of the above actions have been taken in consultation with experts from the community sector, and where relevant, law enforcement bodies, to ensure the safety of victim survivors is prioritised and reforms are as effective as possible.

Banks have policies and procedures that address financial abuse and support customers. Banks have established specialist customer hardship and / or vulnerability teams, implemented new processes and trained both specialist and frontline staff to be on the lookout for financial abuse and to take extra care with victim survivors of financial abuse.

These teams offer a range of support to victim survivors which may include account safety and security, crisis support including access to vouchers and accommodation, hardship arrangements, debt waivers, ex-gratia payments, repairing credit reports, referrals to external support or statutory authorities and de-linking PayID.

Bank policies are developed with consideration to self-regulatory guidance including:

#### Banking Code of Practice

The Banking Code of Practice (**Banking Code**)<sup>5</sup> requires member banks to take extra care with vulnerable customers,<sup>6</sup> including those experiencing family or domestic violence or elder abuse.

Extra care includes training staff to act with sensitivity, respect, and compassion, and working with customers to find a suitable way to undertake their banking. Banks will also be respectful of confidentiality, give information that is useful and clear, provide guidance to help maintain and regain control of finances, and make referrals to external support where appropriate.

Other Banking Code requirements include:

- Not approving a new loan, or an increase, where the co-borrower does not receive a substantial benefit unless the bank has taken reasonable steps to ensure the customer understands the risks being a co-borrower, accepted reasons for why they want to be a co-borrower on the loan, and the bank is satisfied they are not experiencing financial abuse.<sup>7</sup>
- Ending liability under a loan in certain circumstances.<sup>8</sup>
- Various protections for those making guarantees including limiting liability, providing certain information, and requiring a minimum of three days to review the guarantee unless additional requirements are met.<sup>9</sup>
- Changing joint account authorities, at the request of one party, for both to approve future withdrawals.<sup>10</sup>
- Assisting a joint account holder experiencing financial difficulty without involving the other person initially, if requested.<sup>11</sup>

<sup>3</sup>Australian Banking Association (2023) [Industry approach to supporting non-customer residents during foreclosure](#).

<sup>4</sup> Announcement available at

<https://www.financialcounsellingfoundation.org/files/ugd/2acba88be2b9a802ba4f37bb54008dc629697f.pdf>

<sup>5</sup> Australian Banking Association, *Banking Code of Practice*, October 2021, available at: <https://www.ausbanking.org.au/banking-code/>

<sup>6</sup> Banking Code Chapter 14

<sup>7</sup> Banking Code Chapter 17 paragraphs 53-57

<sup>8</sup> Banking Code paragraph 56

<sup>9</sup> Banking Code Chapters 25-29

<sup>10</sup> Banking Code Chapter 35 paragraph 139

<sup>11</sup> Banking Code Chapter 39 paragraph 159

### ABA industry guidelines

The ABA and member banks worked with financial counsellors and consumer advocates to develop two guidelines relating to financial abuse:

- [Preventing and responding to financial abuse \(including elder financial abuse\)](#): this guideline focuses on financial abuse of older customers, which may be by family members or others (see appendix 1).
- [Preventing and responding to family and domestic violence \(FDV\)](#): this focuses on family and domestic violence particularly intimate partner violence (see appendix 2).

Each guideline outlines how financial abuse can affect a customer and a best practice framework for banks to provide consistent arrangements to support their customers affected by financial abuse. ABA members are encouraged to use these guidelines to put in place internal policies and procedures.

In addition, individual banks have their own family and domestic violence approaches and policies, and some have assistance programs designed specifically to support victim survivors.

### Financial safety by design

There is a growing body of evidence that financial products and services and their features may be misused to cause harm and perpetrate financial abuse. For example, perpetrators:

- using the free text in the transaction description field of electronic transfers to write abusive, harassing, or coercive messages.
- attempting to open credit products through online portals in the name of victim survivors without their knowledge, with every application registering on their credit score and building an inaccurate and potentially damaging picture of their financial health.
- opening credit products in a victim survivors name and making purchases and accruing debt without the permission of the victim survivor. Some victim survivors may only become aware of these debts after the breakdown of a relationship or when debt collectors attempt to collect these debts.

Banks have responded by increasingly turning their focus to improve product design and have been examining the use of financial safety by design principles.<sup>12</sup> Banks are carefully considering financial safety by design principles to determine how each bank may be able to take action to protect customers. This work is ongoing and must be undertaken carefully to ensure changes cannot be weaponised by perpetrators. The ABA is continuing to enable and support, where possible within competition law restrictions, with community of practice workshops for banks to discuss policy issues and regulatory challenges.

One example that is in the public domain is the work undertaken by many banks to introduce technology to identify abuse in payment descriptions and provide customers tools to seek assistance if they receive abuse via online and mobile banking. The technological solutions to identify abuse in transactions include not just keyword blocking but also in several banks, sophisticated artificial intelligence models that identify high risk transactions for review by bank employees.

Many Australian banks have now changed their product terms and conditions to prohibit use of their products and services to perpetrate financial abuse and the consequences for customers who misuse the products and services. Customers who do misuse products are contacted and the misuse of the product explained to them.

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<sup>12</sup> Centre for Women's Economic Safety, *Designed to disrupt: Reimagining banking products to improve financial safety*, (2022), available at: [https://cwes.org.au/wp-content/uploads/2022/11/CWES\\_DesignToDisrupt\\_I\\_Banking.pdf](https://cwes.org.au/wp-content/uploads/2022/11/CWES_DesignToDisrupt_I_Banking.pdf)

## Existing legislation, common law, and regulatory arrangements that govern the ability of financial institutions to prevent and respond to financial abuse.

Financial services in Australia are governed by a complex legislative and regulatory framework. This complexity inadvertently creates challenges for financial institutions seeking to support customers experiencing financial abuse. The ABA makes the following observations about potential changes to the regulatory landscape:

### National Consumer Credit Protection Act 2009

ABA member banks recognise financial abuse as a factor that can contribute to financial hardship and work with impacted customers. Financial abuse is however not explicitly recognised as a cause of potential financial hardship in *National Credit Code* or the associated ASIC Regulatory Guide 209: Credit licensing: Responsible lending conduct (**RG 209**). Recognition within the law may provide a more consistent response across industry to assisting victim survivors regardless of whom they have borrowed from.

**Recommendation:** Amend the *National Credit Code* and RG 209 to formally recognise financial abuse as a reasonable cause for the debtor's inability to meet their obligations.

### National Comprehensive Credit Reporting Act

The *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Act 2021* (the Amending Act) requires that large banks contribute financial hardship information (**FHI**) for all eligible accounts from 1 July 2022.<sup>13</sup> The ABA advocated for suppression of credit reporting information in situations of family violence.

In July 2022 ASIC adopted a temporary no-action position to enable large banks to withhold the reporting of certain credit information on consumer credit reports where reporting the information could lead to consumer harm, including where a consumer may be a victim survivor of family violence<sup>14</sup>.

**Recommendation:** Per the ABA's recommendation to the Independent Review of Australia's Credit Reporting Framework, implement an ongoing exception to allow the suppression of repayment history information and FHI for eligible accounts (single and joint accounts) in situations where a customer has raised a risk of threat or harm perpetrated by a joint account holder or another person.

### Family law settlements

Banks can face material challenges implementing Family Court of Australia (**Family Court**) decisions and property settlements as decisions may be made without taking responsible lending requirements into account. Banks may be unable to assist a party who expects to retain the family home in line with a Family Court decision, when the party is unable to service the current or new loan required to retain the home and/or meet responsible lending requirements without their co-borrower. This is understandably a cause of significant distress and confusion for customers.

In addition, legally binding property settlement orders to refinance home loans can be ignored by perpetrators, forcing victim survivors to seek support for mortgage repayments they cannot afford while trying to disentangle from their ex-partner. It can be extremely challenging for a bank to assess what the best option is in situations, to both ensure the safety of the victim survivor and comply with legal requirements. While there are processes for enforcement through courts, these can be expensive and slow.

Many Family Court orders are reached by consent and without the supervision of the Family Court and even if family law practitioners are involved, they may not have the requisite knowledge of lending regulations to provide helpful advice.

<sup>13</sup> We note the Credit Reporting Framework is currently under a statutory review

<sup>14</sup> ASIC No-action letter – Notifying joint account holders (family violence) available at <https://download.asic.gov.au/media/d32pemom/no-action-letter-to-credit-providers-and-consumer-lessors-8-july-2022.pdf>

**Recommendation:** Consider ways to improve the information available to family law practitioners and the Family Court regarding responsible lending obligations, for example:

- Make fact sheets available to family law practitioners, the Family Court, and to relevant parties that explain responsible lending obligations and the credit assessment process.
- Explore options to ensure that family law settlements can be implemented as intended. For example, pre-order notification process to the banks, or a requirement for pre-approvals to be obtained if the settlement proposes changes to secured lending or the status of the security property.

### Privacy obligations

The current privacy regime creates some challenges for banks in their efforts to assist some customers where the bank identifies possible financial abuse. A bank must ensure a customer has provided informed and express consent for the collection of personal and/or sensitive information and ensure that relevant information is used for the primary purpose of its collection, stored securely in a system.

The challenge arises where the bank suspects financial abuse (based on a customer's financial transaction data), is not able to engage with the directly customer and is concerned for their financial welfare. The bank may seek to refer the case to a third party such as the police for a welfare check or adult safeguarding authority. However, the bank is not permitted to share personal and/or sensitive information with a third party / organisations without express informed consent, which in some circumstance for example an older person with capacity limitations is not able to provide. Where abuse is taking place behind closed doors and particularly of people with limited contact with the outside world, there may be no other way for this abuse to be detected and stopped, as noted by the Queensland Public Guardian:

*'I cannot tell you the number of times that a bank refers a case of financial abuse to us, we lift the veil and go and visit the person and we find them locked up in a room under the house, completely dehydrated, walking around in soiled underpants, not knowing what time of day it is. They may not have eaten for days, and the family who is living upstairs have just left'.<sup>15</sup>*

In these circumstances, banks will have to engage with the various exceptions in the Privacy Act to do what they consider to be in their customer's interests. This process can be challenging and is complicated further by the different positions that regulators and dispute bodies take to interpreting Australian law, including the Office of the Australian Information Commissioner, the Australian Financial Complaints Authority and the Australian Securities and Investments Commission. Given this, banks find that customers may not get the assistance or protection they desperately need. A potential solution would be to broaden section 16A of the Privacy Act to permit the collection, use, and disclosure of personal information and/or sensitive information where there is a substantial concern about an individual's economic wellbeing. This is currently not permitted.

The ABA raised this issue in our submission to the Attorney General's Department's Review of the Privacy Act (**Privacy Act Review**).<sup>16</sup> The Government Response to the Privacy Act Review was released in September 2023, in which the government agreed-in-principle to support the following recommendation:

Proposal 17.3 Further consultation should be undertaken to clarify the issues and identify options to ensure that financial institutions can act appropriately in the interests of customers who may be experiencing financial abuse or may no longer have capacity to consent.

<sup>15</sup> Natalie Siegel-Brown cited in Caxton Legal Centre, *Rock the Boat: Safeguarding models through the human rights looking glass – a legal perspective* (Discussion Paper No 2, 2019) 13. The investigate and information gathering powers conferred under ss 19 and 24 of the *Public Guardian Act 2014 (QLD)* expressly override any other privacy laws, regulations, or claims of privilege and confidentiality that bank staff generally work under.

<sup>16</sup> ABA submission to Privacy Act Review Report (2023) (submission response 990223492), pp13-15, [https://consultations.ag.gov.au/integrity/privacy-act-review-report/consultation/view\\_respondent?sort-order=excerpt-ascending&uuld=990223492](https://consultations.ag.gov.au/integrity/privacy-act-review-report/consultation/view_respondent?sort-order=excerpt-ascending&uuld=990223492)



The ABA has subsequently been advised by the Attorney General's Department that proposal 17.3 will not be further considered until this Committee has reported.

#### Case study – elder abuse

Edith Black is 83 years old and lives with her daughter and son-in-law, Henrietta and Tom Swan. Edith has an account with the bank where her age pension is deposited. The account has a balance of \$202,430.

Edith has appointed Henrietta as her attorney under her Enduring Power of Attorney. One day, Henrietta attempts to transfer \$120,000 from Edith's account to a building contractor. The transaction description lists 'Henrietta Swan – Renovation.' The Bank notices the transaction and is concerned that this payment may not be for Edith's benefit. It places a block on Edith's account while further enquiries are made about the purposes of the transaction.

The bank tries to speak directly with Edith to confirm she is aware of the transaction and to raise its concerns. However, the contact details listed for the account are managed by Henrietta, who does not allow the bank to speak with Edith over the phone. Henrietta also refuses to bring Edith to the branch to discuss the transaction.

The bank has genuine concerns for Edith's financial welfare. It has no basis to conclude that Edith has diminished capacity and would like to refer the matter to the State police force for a welfare check. The bank cannot rely on the 'permitted general situation' exceptions under section 16A of the Privacy Act as these exceptions do not extend to a threat to an individual's economic wellbeing.

#### Enduring Powers of Attorney

An Enduring Powers of Attorney (**EPOA**) should be an instrument of protection but too often can become an instrument of financial abuse. Each state and territory have their own set of laws and processes and the inconsistencies across jurisdictions cause unnecessary confusion in the community and among banks and other entities required to act on EPOAs.

In most jurisdictions<sup>17</sup> EPOAs are not required to be registered, making it hard for banks or other entities acting on an EPOA to confirm the legitimacy of the instrument e.g., is the document presented to a bank the most recent EPOA or if it has been rescinded. In most jurisdictions it is unclear to which authorities bank staff can escalate financial abuse concerns.

These challenges and their consequences were recognised in the 2017 the Australian Law Reform Commission Report 'Elder Abuse - A National Legal Response' (**ALRC Report into Elder Abuse**) which recommended:

*"Recommendation 5–3 A national online register of enduring documents, and court and tribunal appointments of guardians and financial administrators, should be established after:*

*(a) agreement on nationally consistent laws governing:*

*(i) enduring powers of attorney (including financial, medical and personal);*

*(ii) enduring guardianship; and*

*(iii) other personally appointed substitute decision makers; and*

*(b) the development of a national model enduring document. This would enable financial institutions to verify the authority and currency of a power of attorney."*<sup>18</sup>

Harmonisation of arrangements will reduce unnecessary complexity for banks and others required to act on the EPOA, including training for staff and communications for customers. The introduction of a

<sup>17</sup> Only Tasmania has a register

<sup>18</sup> Australian Law Reform Commission (ALRC) Report (2017) 'Elder Abuse - A National Legal Response' p.181



national online register will allow banks to check the validity of an instrument. We note the Attorney-General's Department undertook two consultations into the development of a national online register in March 2020 and July 2021 and consulted on the issue of harmonisation of EPOAs in November 2023.

Chapter 14 of the ALRC Report into Elder Abuse recommends the establishment of an adult safeguarding authority in each state and territory. The authority should have the power investigate and act on suspected abuse; and that the authority should be able to accept 'good faith', reports of suspected abuse.<sup>19</sup>

Banks support the establishment of a designated body to receive and investigate reports of suspected cases of abuse in each state and territory jurisdiction. Some jurisdictions - QLD, NSW, ACT and SA - have put in place adult safeguarding authorities but there is no uniform approach to reporting suspected financial abuse and the abuse is not always investigated or acted upon.

Each body needs to have the ability to accept 'good faith' reports from financial institutions, similar to the NSW Commission for Ageing and Disability and ACT Human Rights Commission. These bodies take advantage of the exceptions in accordance with the 'authorised by law' exception in Australian Privacy Principle 6.2(b).

Both the ACT Human Rights Commission and the NSW Ageing & Disability Commission have developed information sheets for financial institutions reporting alleged financial abuse of older people.

We recommend the EPOA reforms are considered in conjunction with the Privacy Act Review, specifically proposal 17.3 to "identify options to ensure financial institutions can act appropriately in the interests of customers who may be experiencing financial abuse or may no longer have capacity to consent".

In the absence of a designated agency, we would welcome clear guidelines for when and what could be reported to State Tribunals in cases of suspected financial abuse.

**Recommendation:** That the Committee recommend implementation of the 2017 the Australian Law Reform Commission Report 'Elder Abuse - A National Legal Response' recommendations that relate to harmonisation of powers of attorney arrangements; establishment of a national online register of enduring documents; and an authority to report suspected abuse to, which has the power to investigate and act.

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## About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

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<sup>19</sup> Australian Law Reform Commission (ALRC) Report (2017) 'Elder Abuse - A National Legal Response' pp. 379-415.

# Industry Guideline

## Preventing and responding to financial abuse (including elder financial abuse)

### 1. Purpose of the industry guideline<sup>1</sup>

This industry guideline:

- Explains what financial abuse can look like and how it can impact customers and a bank's relationship with their customers; and
- Outlines a framework for banks to raise awareness and promote consistent arrangements to deal with suspected cases of financial abuse

This guideline reflects good industry practice, and the ABA encourages members to use the principles in this guideline to put in place internal processes, procedures, and policies.

The ABA has prepared consumer fact sheets about financial abuse and setting up powers of attorney that banks can share with their customers. These can be accessed at [www.ausbanking.org.au](http://www.ausbanking.org.au).

### 2. About this guidance

The **Banking Code of Practice (the Banking Code)** sets out the standards of practice and service in the Australian banking industry for individuals and small business customers, and their guarantors. The Banking Code provides safeguards and protections not set out in the law. It complements the law and, in some areas, sets a higher standard than the law.

This guideline complements the provisions of the Banking Code that requires member banks to take extra care with vulnerable customers, including those that may be experiencing financial abuse. The Banking Code notes that a bank may only become aware of a customer's vulnerability if the customer tells their bank about it.

In this context, extra care includes training staff to act with sensitivity, respect, and compassion, and working with customers to find a suitable way to undertake their banking. Banks will also be respectful of confidentiality, make communications easy, provide guidance to help customers maintain and regain control of finances, and refer customers to external support services where appropriate.

Other requirements in the Banking Code relevant to financial abuse include:

- *Part 7 of the Banking Code*, outlines protections for prospective guarantors including requiring the prospective guarantor to sign the guarantee independently from the borrower and requiring three days for the guarantor to consider their obligations (where they do not obtain legal advice or fall within one of the other exemptions).<sup>2</sup>
- *Part 5 of the Banking Code*, outlines provisions for not approving a new loan, or an increase to a loan, where the coborrower does not receive a substantial benefit unless the bank has taken reasonable steps to ensure the coborrower/s understand the risks of the loan, why they want the loan, and are satisfied they are not experiencing financial abuse<sup>3</sup>.

<sup>1</sup> This industry guideline does not have legal force or prescribe binding obligations on individual banks. While the ABA's industry guidelines are voluntary, this industry guideline has been developed with input from, and agreed to by, member banks. The ABA encourages member banks to follow this industry guideline and incorporate it into their internal processes, procedures and policies.

<sup>2</sup> Banking Code of Practice, March 2020, pp.33-36, <https://www.ausbanking.org.au/wp-content/uploads/2020/06/2020-Code-A4-Booklet-with-July-1-COVID-19-Special-Note-WEB.pdf>

<sup>3</sup> Banking Code of Practice, March 2020, p.41, <https://www.ausbanking.org.au/wp-content/uploads/2020/06/2020-Code-A4-Booklet-with-July-1-COVID-19-Special-Note-WEB.pdf>

This guideline should be considered in conjunction with the [ABA Industry Guideline: Responding to requests from a power of attorney or court-appointed administrator](#). While powers of attorney arrangements are an important tool for protecting a customer's future financial circumstances, some attorneys may misuse this power, either inadvertently or deliberately. Banks have an important role to play in establishing that attorneys are properly authorised to undertake transactions on behalf of their principal

The ABA has developed two guidelines relating to financial abuse, *Preventing and responding to financial abuse* and *Preventing and responding to family and domestic violence (FDV)*. This guideline focuses broadly on financial abuse of customers, which may be by family members or others. The second focuses on family and domestic violence particularly intimate partner violence. The ABA recognises that financial abuse by a family member is a form of family and domestic violence, and that there are some common themes in both industry guidelines.

The new aspects of this guidance are to be implemented within 12 months of release. Matters carried forward from the previous guidance (December 2014) should already be implemented.

## 3. Background

### 3.1 What is financial abuse?

Financial abuse occurs when someone takes away another person's access to money, manipulates another person's financial decisions, or uses another person's money without their consent<sup>4</sup>. The abuser could be a partner, a family member, carer, guardian, or friend. Where the abuser is a partner or family member, the abuse constitutes family violence.

Financial abuse is a serious and far-reaching problem that can happen to anyone. However, some people, such as the elderly, people with a cognitive impairment, people with a disability or other vulnerable people are at greater risk, as they are more likely to depend on others for assistance with their financial matters.

Financial abuse can take many forms and often consists of several actions which take place over a period of time, rather than a single event. Financial abuse is sometimes combined with other forms of abuse and neglect. It may include the following:

- stealing, taking, or 'borrowing' a person's money, debit or credit cards, possessions or property without their knowledge or consent
- limiting or denying a person access to their money or bank statements
- forging someone's signature, forcing them to sign a document or misleading them about the contents of the documents they are signing
- using a person's money or assets knowing that the person is unlikely to complain because they are dependent on the other person for care and support (note, consent or authorisation can be coerced in this situation)
- using another person's money for purposes against that person's wishes
- pressuring another person to sign or change a will, power of attorney, enduring power of attorney or contract
- using an enduring power of attorney in a way that is not in the interests of the principal or is not consistent with the principal's instructions (e.g., this could be taking money from their account to pay for personal bills).
- pressuring another person to act as a co-borrower or guarantor for a loan/joint loan when they do not wish to do so.
- making a person pay for another person's expenses (e.g., where they share a home with another person and do not contribute to bills, maintenance, and other expenses despite being asked to do so).

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<sup>4</sup> ASIC - <https://moneysmart.gov.au/financial-abuse>

## 3.2 Recognising potential financial abuse

ABA member banks have obligations under the Banking Code to take extra care with customers who are experiencing vulnerability, including those experiencing financial abuse.<sup>4</sup> Although financial abuse can impact anyone, cognitive incapacity can increase the risk of financial abuse and can make it difficult not only for the person impacted, but also for bank staff to know what to do and where to escalate.

All banks should be aware of potential warning signs of financial abuse. These include:

Customer facing context: when the customer:

- appears to be coerced into making transactions
- remains silent while another party does all the talking / appears to be taking instructions from someone else whilst dealing with branch staff / or talking to the bank over the phone
- appears withdrawn and fearful (particularly of the person accompanying them)
- does not appear to understand the documents they are signing or the transaction they are approving
- does not understand or is not aware of recently completed transactions
- withdraws large or unusual amounts of cash, particularly while accompanied by a person the customer does not appear to know well, or who appears to be influencing the customer in relation to the transaction gives implausible explanations or is confused about what they are doing with their money
- expresses concern about missing funds, or personal or financial documents
- indicates they should have enough money to pay bills but are unable to do so (e.g., they complain of having no heating despite the fact they can afford it)
- unusual requests such as adding an additional party/ies as a signing authority or switching to digital access.

Other suspicious activity includes a third party presenting a withdrawal form or cheque signed by the customer, but the rest of the form is filled out in different handwriting; or when withdrawals or transfers are made on behalf of the customer without prior direct contact from them.

Digital context: when the customer

- makes unusual or uncharacteristic transactions, such as large increases in withdrawals or unusual purchases or third-party transfers, for example an overseas holiday or a new car
- transactions made from a location where the customer is unlikely to be located
- changes are made to an address on an account by an authorised third party, or requests are made by the authorised third party to send correspondence to them
- changes in operation of the account or unusual activity following the appointment of an enduring power of attorney.

There can also be an increase in financial abuse during major crises that result in economic pressure (this may include natural disasters, economic or financial crisis, and pandemics). Banks should be alert to potential increases in financial abuse during these times.

## 3.3 Understanding why it is difficult for customers to seek help or report abuse

If financial abuse occurs in a relationship where the customer trusts or depends on the abuser, the customer may fear reporting the abuse for a range of reasons:

- they fear losing the relationship, possible retaliation from their abuser and potentially being isolated from their family.

- they may be dependent on the abuser for their care and/or the care of children, and worry about how they will manage without this support
- they may be reluctant to believe that someone they trust is exploiting them
- they may want to shield their abuser from legal repercussions, despite wanting to stop the abuse
- they may believe it is their fault or feel ashamed that their child or family member is harming them
- they may fear that no-one will believe them or a view that reporting the abuse will be pointless

Due to the sensitive and complex nature of financial abuse, in particular elder financial abuse, it should be recognised that in some cases the victim may wish to retain an amicable relationship with the perpetrator, and that this ought not be used against them in the bank's investigation of the situation.

A customer may find it difficult to report financial abuse if they are isolated, have limited mobility, cognitive impairment, speak limited English, or are dependent on family members or others for support and access to services.

Cultural factors may also influence perceptions of financial abuse as well as approaches to problem-solving among people from culturally and linguistically diverse communities, including Aboriginal or Torres Strait Islander people.

Sometimes people may not be aware that financial abuse is taking place, particularly if information is withheld from them (i.e., account statements and other mail is being redirected or is intercepted) or they have limited financial literacy.

## 4. Principles for good industry practice

Financial abuse is complex and can present challenging situations for a bank employee. Banks need to help their customers without restricting their freedom of choice. In cases of suspected financial abuse, it is important to be vigilant and cautious, while remaining respectful.

There are several steps banks and financial institutions can take to reduce the risk of financial abuse of a customer:

### 4.1 Develop internal bank guidelines and procedures

Banks should develop internal guidelines and procedures that take reasonable steps to identify and prevent financial abuse, including:

#### 4.1.1 Protect customer confidentiality and safety

Banks should ensure a customer's contact information is kept secure and confidential, for example:

- Customer contact details should not be communicated or disclosed to others
- Identify safe ways to communicate with a customer who has been recognised as being affected by financial abuse, for example by asking the customer to nominate a safe time to talk and the best way for the bank to get in touch with them (such as by phone, email, SMS, web mail or a phone message). Circumstances may change, so where practical, continue to ask the customer about the safest way to make contact.
- Inform customers about the circumstances and nature of information that must be shared with their authorised representatives on their account.
- Contact details such as phone and address should be updated to reflect the customer and not their attorney or representative, for example, customers who have moved into assisted living should have these details reflected and not contact details of their support people listed to ensure banks are still able to validate accuracy of customer information.

### 4.1.2 Help customers to manage their own finances

Banks should presume customers have the ability to make decisions about their banking services, however, some customers may need support in making and communicating decisions about their banking facilities. Where it is known that the customer has the capacity and ability to make decisions about their banking decisions, banks should help customers put in place arrangements that allow the customer and/or their support people to manage their banking. For example, banks can provide:

- products with features that help customers manage their account, such as ‘two to sign’ arrangements, pre-set digital and card limits, transaction notifications, blocks on overseas transactions made on cards and digitally, other proprietary features provided by banks.
- assistance to a customer concerned about their privacy or security, and wants to change their passwords and PINs.
- secure options to enable properly authorised third parties e.g., carers, to carry out banking functions for an authorised person without breaching the terms and conditions of accounts, for example a bank may be able to provide a dedicated card/pin for the authorised person (so transactions can be tracked), read only account access and limits on the type of transactions and/or amounts. Appropriate authority would always need to be provided by the customer or administrator/trustee.
- recommendations to customers, to seek advice and plan ahead to enable formal arrangements to be put in place when it appears appropriate, such as an enduring power of attorney with clear instructions, so a trusted person/s can help them manage their finances. For more information on helping a customer set up their support team refer to [Safe & Savvy: A guide to help older people avoid abuse, scams and fraud](#).

Banks may develop easy to follow customer information or support for customers who are not familiar with internet banking, so they know how to use internet banking safely.

### 4.1.3 Make it easier for customers to communicate with the bank

Banks should consider adopting the following practices to make it easier for customers to communicate with them:

- identify the best way to contact a customer (such as by phone, email, SMS, or a phone message).
- minimise the information that a customer is required to provide and the number of times a customer discloses the same information. For example, where possible in complex situations, customers should speak to the same staff member.
- make the bank’s communications with customers as clear as possible, particularly when the bank is aware that a customer is experiencing vulnerability or has limited English<sup>5</sup>.
- help the customer to access a qualified, independent interpreter to assist with communication where appropriate.

### 4.1.4 Help customers when accounts are in dispute

Banks will review circumstances where a customer informs the bank they were subjected to financial abuse, or family and domestic violence, when entering into a transaction, or where the customer was not aware of a transaction. Banks should escalate these issues quickly to their relevant Internal Dispute Resolution area. Banks should also take action to preserve funds whilst a dispute is being investigated, to protect all parties involved.

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<sup>5</sup> In accordance with the Code chapter 13: being inclusive and accessible



## 4.2 Clear guidance on the use of powers of attorney and authority to operate arrangements

Banks should provide clear guidance to staff, so they understand the legal and procedural obligations of different decision-making instruments including powers of attorney, an authority to operate, and substituted decision-making arrangements made by a court or tribunal<sup>6</sup>.

This should include correct procedures to check and verify third-party authorisations and power of attorney documentation. The [ABA Industry Guideline: Responding to requests from a power of attorney or court-appointed administrator](#) outlines a framework banks can use to manage requests from attorneys and administrators consistently, including how a bank verifies when an enduring power of attorney power comes into effect.

While powers of attorney are an important tool for protecting a customer's financial position, some attorneys may misuse this power, either inadvertently or deliberately. Banks have an important role to play in checking that attorneys are properly authorised.

Where bank staff form a suspicion that the attorney may not be acting in the principal's interest, this should prompt further consideration by the bank, which may include escalation to a specialist team, or questioning of the attorney, or a direct conversation with the principal if possible.

Signs that an attorney may not be acting in the principal's best interests include:

- transactions that do not appear to benefit the principal, such as overseas travel, purchases of cars or other household goods when the principal is confined to a nursing home
- high risk transactions, such as risky investments
- payments for renovations to the principal's home which do not appear to be to make it more comfortable or accessible for them, such as large extensions when the attorney is living there or will inherit the home.

Banks should maintain an up-to-date record of any disputes in relation to the account, the steps taken to resolve the dispute and the resolution. This will help the bank monitor the account and identify any potential misuse by an attorney.

If there are concerns that the customer is being financially abused the bank should consider contacting the relevant adult safeguarding agency in that state or territory for advice (refer to appendix 1).

### Authority to operate forms

For bank specific authority to operate forms, a prominent and simple warning to customers should be included e.g. that what they are doing may expose them to harm and they may wish to talk to a trusted adviser before signing the document.

When an authority form is provided to a bank the bank should take reasonable steps to ensure the authority has not been obtained fraudulently or under duress and that the customer has capacity and the ability to make decisions about their banking decisions. Banks should make reasonable efforts to ensure that a customer is aware that they can revoke an authority to operate form.

For bank specific authority to operate forms, banks should have processes in place to periodically prompt customers to inquire if their existing authority to operate needs updating or changing (e.g. they may have been established some time ago).

Where someone else has authority on an account and there is a suspicion of abuse or other such scenario, it is important that the bank continues, where practical, to provide information to the account holder about their account transactions. This is important for oversight, but also a way of ensuring older people and/or people with a disability continue to be included in decisions if possible.

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<sup>6</sup> where a court or tribunal appoints a private manager or guardian, or a state-appointed trustee, guardian or advocate to make decisions on an individual's behalf (guardians and administrators) including financial management orders.



### 4.3 Investigate ways to identify potential financial abuse involving digital banking platforms

Banks use software and other digital tools to identify 'suspicious transactions' including fraud. Subject to individual bank system constraints, banks will investigate the feasibility of using existing suspicious activity monitoring technology to detect uncharacteristic behaviour that could be indicative of financial abuse. For example, an increase in uncharacteristic bank transfers picked up by the bank while monitoring for fraud and scams, may be an indication of financial abuse. A phone call to the customer to check on the transfer might allow the potential victim to say something and the bank to stop the transactions.

Banks will review circumstances where a customer informs the bank that they were subject to financial abuse or family and domestic violence when entering into a transaction, or where the customer was not aware of a transaction.

Banks use software and other digital tools to identify 'suspicious transactions' including fraud. Subject to individual bank system constraints, banks will investigate the feasibility of using existing suspicious activity monitoring technology to detect uncharacteristic behaviour that could be indicative of financial abuse. For example, an increase in uncharacteristic bank transfers picked up by the bank while monitoring for fraud and scams, may be an indication of financial abuse. A phone call to the customer might allow the potential victim to raise concerns about the transactions.

Banks will consider a customer's liability for a transaction where the customer informs the bank that they were forced to enter into the transaction as a result of financial abuse or family and domestic violence or were not aware of the transaction.

### 4.4 Provide appropriate employee training and awareness of policies

Banks should have training programs in place to equip staff with the knowledge and skills to help customers when there is either 'disclosed' and or 'suspected' financial abuse. Training should be relevant to the employee's role and help staff to:

- be aware of the prevalence and practical effects of financial abuse on a bank customer (see section 3.3 Understanding why it is difficult for customers to seek help or report abuse)
- recognise the signs of potential financial abuse (see section 3.2 Recognising potential financial abuse) and family violence (see *Industry Guideline Preventing and Responding to Family and Domestic Violence*)
- understand the bank protocols to manage suspected financial abuse
- protect customer confidentiality and safety
- have an appropriate and private conversation with a customer where possible, including
  - information to help them understand and identify potential financial abuse.
  - where abuse is suspected, 'clear, factual, and non-threatening questions' to learn the reasons for a suspect transaction
  - an explanation of the implications of the suspect transaction or decision for the customer including suitability of guarantees or joint loans, and
  - careful listening to what the customer says and how they say it (observe body language when in person, tone on phone and whether they are being prompted to answer by someone else on the phone).
- know when to escalate to a team leader or supervisor, where the staff member thinks an account history should be reviewed to determine whether a transaction should be processed, stopped or reported to bank security (because of potential fraud), or whether a transaction involves another section of the bank and extra support is required.
- know how to make appropriate records of the conversation

- have clear internal referral pathways to specialist support staff or teams, for example from front line, complaint, fraud, investigations, and collections/hardship staff.

## 4.5 Refer the customer for extra support, if appropriate.

Customers who experience financial abuse may require additional support from the bank while they attempt to restore their financial position. Banks recognise financial abuse as a cause of financial difficulty.

Banks have **financial hardship programs** aimed at supporting customers experiencing financial difficulty. Customers impacted by financial abuse who are having trouble meeting their financial commitments with a bank should be referred to the bank's financial hardship team.

Banks may review circumstances where a borrower or guarantor says they:

- were coerced into the credit obligation, and they have received limited or no substantial benefit from the credit obligation<sup>7</sup>, and
- did not know they were responsible for a credit obligation, including a joint debt, a debt or credit card, or credit card limit increase, in the individual's name or as a guarantor.

Front line bank employees should support customers without credit products with the bank, but who are similarly experiencing financial difficulty due to the impacts of financial abuse, by suggesting other options of extra support such as opening new accounts to direct monies to or additional existing account security arrangements.

Bank employees are not generally trained to provide support for non-financial matters. Where appropriate bank employees may suggest a customer seek support from external services such as the Public Advocate, Public Guardian, elder abuse prevention service, financial counsellor, community legal centre or other relevant State or Territory government agency. It is the customer's choice whether they seek help or not, but the banks can offer to help customers find where they can get further assistance.

## 4.6 Refer customers to external support

Where appropriate, banks should provide customers with details of external support organisations<sup>8</sup> for further assistance. It is the customer's choice whether they seek help or not. Referrals should be made on a case-by-case basis as and when appropriate and within any relevant bank frameworks – this may include 1800 ELDERHelp, seniors rights organisations, public advocates, professional financial counsellors and Legal Aid (see list at 5. *Where to go for more information and support*).

## 4.7 Reporting abuse to the relevant authorities, when appropriate

Reporting suspected abuse may also be a reasonable step for banks to take in some circumstances. It's important to note that in reporting abuse, bank should consider any potential safety risks the victim survivor could face due to a report being made.

Banks should not require a customer to report their abuser to the police or other authorities. This may put the customer in a difficult position with their family members or other support providers (especially in an elder abuse situation).

Where there is a concern or suspicion of the actions of a Power of Attorney the bank should proactively engage extra support on behalf of the customer such as contacting the relevant adult safeguarding agency in that state or territory for advice (such as an Office of the Public Advocate or Office of the Public Guardian and/or the relevant state or territory administrative tribunal) and/or police (refer to Appendix 1 Offices of the Public Advocates, Public Guardians and State Administrative Tribunals).

<sup>7</sup>Under the Code Chapter 17 a bank will not lend to a co-borrower unless they will receive a substantial benefit from the loan or they have taken reasonable steps to ensure the borrower understands the risks, understands the difference between being a guarantor and co-borrower, considered why the customer wants to be a co-borrower and are satisfied the customer is not experiencing financial abuse.

<sup>8</sup> In accordance with the Code clause 41d

## 4.8 Raise customer awareness of policies and procedures

Banks can play a preventative role by educating customers about financial abuse policies and proactively encouraging customers to put in place arrangements to manage their finances. Banks should promote their financial abuse prevention to employees, customers, financial counsellors, community legal services, legal aid and specialist support services.

The following section, 5. *Where to go for more information and support* provides, a list of referral options for customers seeking additional information and support.

## 5. Where customers can go for more information and support

### Advice and support

- **1800 ELDERHelp.** Tel: 1800 353 374 (national free call phone number that automatically redirects callers seeking information and advice on elder abuse with local phone line services).
- **Elder Abuse Action Australia (EAAA)** knowledge hub **Compass:** <https://www.compass.info/> has information and resources available for older Australian and the broader community.
- The **National Legal Aid Family Violence Law Help** website ([www.familyviolencelaw.gov.au](http://www.familyviolencelaw.gov.au)) provides advice on domestic and family violence and the law in Australia.

### Finance, debt and legal issues

- **National Debt Helpline**— You can talk to a free and independent financial counsellor from anywhere in Australia by ringing 1800 007 007 <https://ndh.org.au/>
- **Legal Aid** – Can provide advice on intervention orders, family law and civil / credit and debt matters. Find a legal aid commission at [www.nationallegalaid.org/](http://www.nationallegalaid.org/)
- **Community Legal Centres (CLC)** – Can provide advice on AVOs, family law and credit and debt / financial counselling and other generalist civil law advice. Find a local CLC at [www.naclc.org.au/](http://www.naclc.org.au/)
- **Australian Financial Complaints Authority (AFCA)** is a free, independent dispute resolution scheme to deal with complaints from consumers and small businesses about financial services products. <https://www.afca.org.au/> / 1800 931 678.

### Online safety

- The e-Safety Commission's *Be Connected program* is designed to help older people navigate online banking.

### Planning ahead: Guides to supported or substituted decision-making arrangements

- *Safe & Savvy: A guide to help older people avoid abuse, scams and fraud* provides information on helping a customer set up their support team.
- The Australian Guardianship and Administration Council (AGAC) website at [www.agac.org.au/links](http://www.agac.org.au/links) has links to State and Territory agencies with information on power of attorney documents and other guardianship issues. The AGAC has produced a guide for customers about making an enduring power of attorney for financial decisions: *You Decide Who Decides*.
- ABA consumer fact sheet: *Setting up a power of attorney to help manage your banking needs*
- ADACAS *Your decision-making toolkit*, ADACAS is an independent, not-for-profit, advocacy organization helping people with disabilities, people with mental health conditions, older people and their carers.
- The Cognitive Decline Partnership Centre, University of Sydney has produced *Supported decision-making: A guide for people living with dementia, family members and carers*.

**Document updated: March 2021**

# Industry Guideline

## Preventing and responding to family and domestic violence

### 1. Purpose of the industry guideline<sup>1</sup>

Family and domestic violence<sup>2</sup> is a whole community issue and requires the collective efforts of government, communities, and the corporate sector, including banks, to respond to the challenges.

This industry guideline:

- Explains that financial abuse is a form of family and domestic violence.
- Outlines how financial abuse can affect a bank's relationship with their customer.
- Outlines a framework to enable banks to provide consistent arrangements to support their customers who may be affected by family and domestic violence.

This guideline reflects good industry practice, and the ABA encourages members to use the principles in this guideline to put in place internal processes, procedures, and policies.

The guideline acknowledges that banks play a role in working with customers to support them with their banking needs where they are affected by family and domestic violence. However, it is not the role of banks to deal with the broader implications of family and domestic violence.

### 2. About this guideline

The **Banking Code of Practice (the Banking Code)**<sup>3</sup> sets out the standards of practice and service in the Australian banking industry for individual and small business customers, and their guarantors. The Banking Code provides safeguards and protections not set out in law. It complements the law and, in some areas, sets higher standards than the law.<sup>4</sup>

This guideline compliments the provisions of the Banking Code that requires member banks to take extra care with vulnerable customers<sup>5</sup>, including those experiencing family or domestic violence. The Banking Code notes that a bank may only become aware of the customers vulnerability if the customer tells their bank about it.

In this context extra care includes training staff to act with sensitivity, respect, and compassion, and working with customers to find a suitable way to undertake their banking. Banks will also be respectful of confidentiality, make communications easy, provide guidance to help customers to maintain and regain control of finances, and make referrals to external support where appropriate.

Other requirements in the Banking Code relevant to family and domestic violence include:

- Not approving a new loan, or an increase, where the co-borrower does not receive a substantial benefit, unless the bank has taken reasonable steps to ensure the co-borrower understands the

<sup>1</sup> This industry guideline does not have legal force or prescribe binding obligations on individual banks. While the ABA's industry guidelines are voluntary, this industry guideline has been developed with input from, and agreed to by, member banks.

<sup>2</sup> The term 'family and domestic violence' includes 'domestic violence' and 'family violence' and has been used to reflect the fact different terminology is used across the Australian jurisdictions. Financial abuse is a form of family and domestic violence.

<sup>3</sup> The Banking Code "Introduction: What is the Banking Code of Practice" <https://www.ausbanking.org.au/campaigns/new-banking-code/#The%20Banking%20Code%20of%20Practice>

<sup>4</sup> The Banking Code Part A introduction: What is the Banking Code of Practice?

<sup>5</sup> The Banking Code Chapter 14

risks associated with entering the loan; has taken into account the reasons why they want to be a co-borrower; and is satisfied they are not experiencing financial abuse.<sup>6</sup>

- Ending liability for as yet to be drawn loan amounts in certain circumstances<sup>7</sup>.
- Protections for guarantors including limiting liability, requiring banks to provide certain information, and requiring that banks allow a minimum of three days for a review of the guarantee unless additional requirements are met<sup>8</sup>.
- Changing joint accounts authorities, at the request of one party, for all to approve withdrawals<sup>9</sup>.
- Assisting a co-borrower experiencing financial difficulty, without involving the other person initially, if requested<sup>10</sup>.

The ABA has developed two guides relating to financial abuse, *Preventing, and responding to financial abuse* and *Preventing and responding to family and domestic violence (FDV)*. The first focuses broadly on financial abuse of customers, which may be by family members or others. The second focuses on family and domestic violence, particularly intimate partner abuse. The ABA recognises that financial abuse by a family member is a form of family and domestic violence, and that there are some common themes in both guidelines. The ABA guidance *Responding to requests from a power of attorney or court appointed administrator*<sup>11</sup> is also relevant.

The new aspects of this guidance are to be implemented within 12 months of release. Matters carried forward from the previous guidance (November 2016) should already be implemented.

### 3. Background

Family and domestic violence has devastating consequences for individuals, families, and communities. It can also have a major impact on a person's financial security and wellbeing.

Over 2 million Australians have experienced physical or sexual violence from a current or previous cohabiting partner since the age of 15, with women three times more likely than men to experience violence from a current or former cohabiting partner<sup>12</sup>. People with a disability and indigenous people are more likely to experience domestic and family violence. Family and domestic violence is a leading cause of homelessness. There is limited data specific to financial abuse, though 63% of women experiencing high financial stress also have a history of financial abuse<sup>13</sup>.

As well as physical and sexual violence, family and domestic violence includes threatening and coercive behaviour, emotional, psychological, or financial abuse.

#### 3.1 What is financial abuse?

Financial abuse can be a “form of family violence that negatively impacts a person financially and undermines their efforts to become economically independent”<sup>14</sup>. Financial abuse is about power, control and manipulation of an individual. Financial abuse often occurs with other forms of violence, including physical violence, intimidation and controlling behaviour<sup>15</sup>. The abuse is generally long term and may continue after an individual has left an abusive partner.

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<sup>6</sup> The Banking Code clauses 53-57

<sup>7</sup> The Banking Code clause 56

<sup>8</sup> The Banking Code chapters 25-29

<sup>9</sup> The Banking Code clause 139

<sup>10</sup> The Banking Code clause 159

<sup>11</sup> [https://www.ausbanking.org.au/wp-content/uploads/2019/05/Industry\\_Guideline\\_Responding\\_to\\_requests\\_from\\_a\\_power\\_of\\_attorneys\\_or\\_court-appointed\\_administrator2.pdf](https://www.ausbanking.org.au/wp-content/uploads/2019/05/Industry_Guideline_Responding_to_requests_from_a_power_of_attorneys_or_court-appointed_administrator2.pdf)

<sup>12</sup> Australian Institute of Health and Welfare 2019 page 8 <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>, with 1 in 6 (17%, or 1.6 million) women and 1 in 16 (6.1%, or 548,000) men had experienced physical and/or sexual violence from a current or previous cohabiting partner.

<sup>13</sup> 63% of women who were experiencing high financial stress and 24% of women with a disability or long-term health condition had a history of economic abuse, compared to the population average of 15.7% <https://theconversation.com/revealed-the-hidden-problem-of-economic-abuse-in-australia-73764>

<sup>14</sup> Camilleri, O., Corrie, T., Moore, S., *Restoring Financial Safety: Legal Responses to Economic Abuse*, Good Shepherd Australia New Zealand and Wyndham Legal Service, 2015, pp.7.

<sup>15</sup> Macdonald, F., *Spotlight on Economic Abuse: a Literature and Policy Review*, Good Shepherd Youth & Family Service and Kildonan Uniting Care, 2012.

While women and children are more often affected, financial abuse can happen to anyone regardless of gender, ethnicity, religion, culture, class, or age, and in heterosexual and same-sex relationships.

Financial abuse includes, but is not limited to:

- Controlling behaviour that denies a person financial autonomy, for example, access to finances, bank accounts and financial records or the ability to work, study or access benefits.
- Withholding or threatening to withhold financial support reasonably necessary for the maintenance of a partner and/or dependent child.
- Coercing a person to relinquish control over assets, take out a loan, credit card, or guarantee a loan in their name for the benefit of the controlling partner, or guarantee a loan.
- Preventing a person from participating in decisions about household expenditure or the sale or disposal of joint property.
- Using control of finances or debt to prevent a person leaving a relationship.
- Demanding all expenditure by a person be justified and evidenced.
- Using the transaction description free-text field in electronic transfers to harass / intimidate or abuse a person.
- Restricting or monitoring a person's access to mobile phones and the internet.
- Stealing, taking, or 'borrowing' a person's money, debit or credit cards, possessions or property without their knowledge or consent.
- Forcing a person to pay for someone else's expenses (e.g., utilities, household maintenance, and other expenses).

The difficulty of obtaining financial independence is often the most significant barrier to leaving a family and domestic violence relationship, and a lack of financial independence often results in a person returning to that relationship<sup>16</sup>.

An ex-partner may use the financial and legal system to manipulate and control the other party and prolong the financial abuse.<sup>17</sup> For example, not paying and defaulting on joint obligations, dragging out property settlements with the intention of causing default on joint debts and default listing of their partner, or even bankruptcy in extreme circumstances.

## 3.2 Recognising potential financial abuse

It is challenging for a bank to know if someone is being affected by family and domestic violence or whether they are a perpetrator of it. Every customer's situation is unique, and banks are obliged to protect their customer's privacy.

When a bank is aware of family and domestic violence, or suspects it may be occurring, the bank will work to support the customer wherever possible.

In most instances a bank will only be aware of family and domestic violence once it has been disclosed by the customer. Banks are committed to exploring further ways to work with stakeholders to proactively identify family and domestic violence and assist customers affected by it.

Some customers may be unaware that they are affected by, or may be reluctant to disclose, family and domestic violence.

ABA member banks have obligations under the Banking Code to take extra care of customers who are experiencing vulnerability.<sup>4</sup> To provide extra care for a customer experiencing vulnerability, all banks should be aware of the potential signs of family and domestic violence, which may include when a customer:

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<sup>16</sup> Fiona Macdonald "Spotlight on Economic Abuse: a Literature and Policy review (report: Good Shepherd Youth & Family Service and Kildonan Uniting Care 2012)

<sup>17</sup> Smallwood, E., Stepping Stones: Legal Barriers to Economic Equality After Family Violence Report, Women's Legal Service Victoria, 2015.



- Appears or sounds distressed or scared.
- Is seen or heard to be taking instruction/s from another person.
- Remains silent while another person does all the talking.
- Does not understand or is not aware of recently completed transactions or loans in their name.
- Asks questions about the other account holder's behaviour or activities.
- Has their income or social security payment paid into another person's account.
- Has received abusive or threatening comments in the free text fields of bank transaction descriptions.
- Has concerns about protecting their personal privacy, safety, or security of their accounts.
  - Expresses reluctance to involve the other co-borrower when seeking a hardship variation or other assistance
  - Discloses the existence of an intervention order or equivalent court order (refer to **Appendix 1** for the types of relevant court orders in each jurisdiction across Australia).

### 3.3 Understanding that family and domestic violence may increase due to external events

Research shows there is often a spike in family and domestic violence during major crises and disasters (this may include natural disasters, economic or financial crisis, and pandemics).

During previous natural disasters (flood, drought, and bushfires) some banks observed delays in reporting financial abuse as people secured their immediate needs and addressed their safety first. During the COVID-19 pandemic some banks observed a spike in reports of family and domestic violence as well as changes to the way customers report it. This may be a result of customers being more closely monitored by their partners during 'lock down' periods.

### 3.4 Understanding why it can be difficult for customers to seek help or report family and domestic violence

Family and domestic violence is traumatic and disempowering. It can be very difficult for customers to disclose the abuse. Customers may fear for their personal safety (and the safety of their family), may feel ashamed or that they will not be believed by the bank. In some cases, they may not realise that they have been affected by financial abuse. Banks should be sensitive to their customer's circumstances and assist them to make an informed decision.

Family and domestic violence is a sensitive issue, and it is important that bank employees act with respect, sensitivity, and compassion and refrain from making moral or legal judgement about their customer.

### 3.5 Recognising customers may be under significant stress

Banks should have procedures in place to help employees recognise when customers may be under significant stress, in fear for their personal safety, homeless and/or residing in temporary accommodation. A customer's individual circumstances can change, and banks should be flexible by reassessing arrangements to ensure they meet the individual needs of their customer.

### 3.6 Understanding the effects of financial abuse

The practical effects of financial abuse on a bank customer can include:

- Being left with sole responsibility for joint loan repayments following a relationship breakdown.
- Poor credit history.
- Limited opportunity to engage in regular employment.



- Lack of access to funds to cover essential household expenditure.
- Homelessness.
- The prospect of long-term financial hardship.
- Isolation from friends, family, and other support networks.
- Psychological and physical health issues from the stress associated with poverty and an uncertain financial future.

The difficulty of obtaining financial independence for themselves and any dependents is one of the most significant obstacles for individuals seeking to leave abusive relationships.

## 4. Principles for good industry practice

### 4.1 Develop internal bank guidelines and procedures

Banks should develop internal guidelines and procedures to assist employees identify and respond to instances where employees may be concerned that a customer may be affected by family and domestic violence.

In doing so, banks should consider seeking input from family and domestic violence community sector experts and those with lived experience.

### 4.2 Provide specially trained staff

Banks should have specially trained teams and / or specialist staff to work with customers recognised as affected by family and domestic violence, for example, additional training for the bank's escalation, financial hardship, and collections teams (or equivalent).

Frontline staff, managers and supervisors should be provided with information, support, and training so they can recognise and respond to potential family and domestic violence and escalate matters to the specialist team or staff as appropriate.

Banks should have clear internal referral pathways to specialist support staff or teams, for example from front line, complaint, fraud, investigations, and collections/hardship staff.

### 4.3 Protect customer confidentiality and safety

Banks should:

- Ensure a customer's contact information is kept secure and confidential (including from any joint account holder/s or co-borrowers). For example:
  - Customer contact details should not be communicated or disclosed to others without authority.
  - Where a customer is recognised as affected by family and domestic violence:
    - Identify safe ways to communicate with the customer, for example ask the customer to nominate a safe time to talk or a way for the bank to get in touch (such as by phone, email, SMS, or a phone message). What is safe may change, so where practical, the bank should continue to ask the customer about the safest way to make contact.
    - Work with the customer to identify any other accounts which may reveal their personal information, such as a child's bank account, and then work with the customer to identify changes required.
    - Record customer information (such as email, address, phone numbers) separate from other joint account holders.
    - Not require the customer to make direct contact with any other joint account holders.
    - Consider whether their actions or requirements could exacerbate a threat to the customer's safety.
    - Inform customers about the circumstances and nature of information that must be shared with their joint account holder/s so they are aware and can plan accordingly. For example, banks cannot withhold information about financial transactions on joint accounts from a party to that account, or information about a child's account if a partner has access to the account (which may include information such as the time, merchant and location of the transaction).
  - Where feasible, provide a 'quick exit' button on webpages relating to family and domestic violence.

## 4.4 Respond to abuse in transaction descriptions

Banks should have procedures in place to respond to inappropriate language or abuse in the free text description fields of electronic transactions, where they become aware of it. For example, procedures may include:

- A process for customers to report issues to their bank, and for banks to report inappropriate content to the sender's bank.
- A provision setting out acceptable use and consequences of inappropriate use in the account terms and conditions or an acceptable use of service policy.
- Increasing customer awareness of inappropriate transaction descriptions and how a customer can report issues to their bank.
- Working with the customer to identify changes to their banking arrangements to address the issue considering their individual situation. For example, quickly opening a new bank account where transactions can be automatically transferred without the offensive descriptions.

When determining responses, banks should ensure they consider their obligations with respect to the transmission of payment messages. For example, those outlined in *the New Payments Platform Regulations and guidance note regarding inappropriate content in NPP Payment Messages*.

## 4.5 Report family and domestic violence to the relevant authorities, when appropriate

Banks should have processes in place to respond to emergency situations, and to ensure their staff can meet mandatory reporting requirements. For example:

- Responding to an immediate safety concern for the customer, their family members or bank employees.
- Where required, fulfilling mandatory reporting requirements of states and territories regarding a person who is likely to or has caused harm in certain circumstances. Refer to **Appendix 2** for details of state and territory requirements, current at time of publishing.

## 4.6 Make it easier for customers to communicate with the bank

Banks should:

- Minimise the information that a customer is required to provide and the number of times a customer discloses the same information. Where possible and particularly in complex situations, customers should have consistency in speaking to one staff member or a single contact point (such as a specialist team).
- As a preventative measure, ensure that from the outset all parties to a joint arrangement can individually access statements. For example, by using their personal log-in to access statements electronically or by receiving them at an address that differs from co-borrowers.
- Provide copies of customer account documents, separately from joint account holder/s on request, without charge where considered appropriate, to assist in resolving matters or for legal purposes<sup>18</sup> (including financial hardship notices). A customer affected by family and domestic violence may not have access to their bank records and documentation.
- Have simple document request processes in place, these may include, for example:
  - An on-line request process for all documents or a submission portal or email address to send requests to.
  - A timeframe for providing documents (where they will be provided).

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<sup>18</sup> In accordance with the Banking Code Chapter 37

- A list of document types that may be requested.
- Clear responsibility for providing the documents.
- Appropriate customer authentication and secure delivery.
- Asking customers how they would prefer to receive the documents, and where possible, accommodating the request (for example: mail, email, collection from branch).
- Make it easy to work with a customer's agent or representative, such as a professional financial counsellor, lawyer, community services worker, legal aid officer or family and domestic violence specialist, for example:
  - Clear and simple processes for appointing an agent or representative while complying with the bank's privacy obligations under the law.
  - Providing a direct telephone number for the relevant area of the bank, where possible.

Note that banks may apply the *ABA debt management firms guiding principles*<sup>19</sup> in determining whether it is reasonable to contact a customer directly.

- Seek to make communications with customers as clear as possible, particularly when aware that a customer is experiencing vulnerability, or has limited English<sup>20</sup>.
- Provide customers with access to a qualified, independent interpreter to assist with communication where appropriate.

## 4.7 Refer customers to external support

Where appropriate banks should provide customers with details of external support organisations<sup>21</sup> for further assistance. It is the customer's choice whether they seek help or not. Referrals should be made on a case-by-case basis as appropriate, and within any relevant bank frameworks – this may include a professional financial counsellor, community legal centre, or specialist family and domestic violence service.

Some banks may offer emergency grants and external case management and support for customers affected by family and domestic violence.

## 4.8 Help the customer regain control of their finances

### 4.8.1 Assist customers in setting up a bank account of their own

In many cases an important step towards financial independence can be the customer having a bank account of their own.

Banks should support customers to, where appropriate:

- Change their access codes (for example: Personal Identification Number, passwords or contact details).
- Open a new bank account suitable for their needs.
- To the extent it is able to do so, use alternative identification to open a bank account where the customer does not already have an account with the bank, and the usual identification documents are not available or changes in address are not consistent with documentation<sup>22</sup>.

<sup>19</sup> Refer ABA webpage: <https://www.ausbanking.org.au/for-customers/debt-management-firms/> and the DMF Guiding Principles at <https://www.ausbanking.org.au/wp-content/uploads/2020/12/ABA-Guiding-Principles-to-DMFs-2020.pdf>

<sup>20</sup> In accordance with the Banking Code chapter 13: being inclusive and accessible

<sup>21</sup> In accordance with the Banking Code clause 41d

<sup>22</sup> Refer AML/CTF Rules Instrument 2007 Part 4.15 <https://www.legislation.gov.au/Details/F2019C00383> and guidance <https://www.austrac.gov.au/business/how-comply-and-report-guidance-and-resources/customer-identification-and-verification/identifying-customers-who-dont-have-conventional-forms-id>

#### 4.8.2 Work with customers to manage accounts that are held jointly

Significant issues can arise when joint deposit accounts and joint liabilities are involved, as these arrangements can be used to intimidate or control individuals. While it is not the banks role to mediate or make decisions relating to family law disputes or settlements, banks can provide some assistance to customers where there are joint arrangements.

Where a customer with one, or more, joint account/s has been recognised as affected by family and domestic violence, banks should:

- Work with each of the parties to a joint arrangement separately, and where reasonably possible, not require one party to contact or obtain consent from the other account holder/s.
- Work with the affected customer to identify any other accounts that may require changed arrangements. For example, a child's account where the perpetrator could access the affected customer's personal information (such as their address).
- Advise customers:
  - Which of their joint accounts allow funds to be withdrawn by one person.
  - That if they are the primary holder of a credit card, they are solely liable for transactions made by additional cardholder/s on their credit cards.
  - To seek independent legal or financial advice regarding the options available to them (and provide external referrals where appropriate).
  - They can request the bank change account authorities to require all account holders to approve withdrawals, but that this may restrict their ability to make withdrawals
- Accept verbal instructions to amend the operating instruction to require all account holders to approve withdrawals<sup>23</sup> or place a hold on the account.
  - The bank may notify the other account holder/s of a change in operating instructions, and if it does, it should ensure the requesting customer understands this before the bank acts on the instruction.
  - Require the authorisation of both parties to amend the operating instructions to 'any to operate' or remove the hold.

#### 4.8.3 Work with customers to manage liabilities in cases of financial hardship

Banks should:

- Accept a financial hardship request from a joint borrower without the consent of the other co-borrower.
- Where possible, subject to customer safety considerations, notify the other borrower.
- Obtain the consent of all to formally vary a joint loan, provided it is reasonable and appropriate to do so<sup>24</sup>.
- Review circumstances where a borrower or guarantor says they:
  - Were coerced into the credit obligation, and they have received limited or no substantial benefit from the credit obligation<sup>25</sup>.
  - Did not know they were responsible for a credit obligation, including a joint debt, a debt or credit card, or credit card limit increase, in the individual's name or as a guarantor.

<sup>23</sup> In accordance with the Banking Code clause 139

<sup>24</sup> Note that banks are subject to legal notice obligations in respect of joint account holders under NCC Hardship provisions

<sup>25</sup> Under the Banking Code Chapter 17 a bank will not lend to a co-borrower unless they will receive a substantial benefit from the loan or they have taken reasonable steps to ensure the borrower understands the risks, understands the difference between being a guarantor and co-borrower, considered why the customer wants to be a co-borrower and are satisfied the customer is not experiencing financial abuse.

In certain circumstances a bank may make a commercial decision to release one co-borrower wholly or partially from a joint debt.

#### 4.8.4 Disputes between account holders

Banks recognise that requiring all parties to approve withdrawals from joint accounts and/or drawdowns on joint loan facilities, may preserve assets where parties are in dispute until they resolve their dispute, for example, through the family court.

In determining whether a bank, of its own volition, or as a result of one party requesting a change of signing authority, should require all account holders to consent to withdrawals, banks should consider each case individually with regard to the specific circumstances. For example, customer safety, the amount of funds at risk, the customer's access to other sources of funds, and whether the restriction would apply to all, or a proportion of the account to enable the customer to meet day to day living expenses without needing the others consent.

### 4.9 Recognise family and domestic violence as a factor contributing to financial hardship

Banks provide specialised hardship arrangements to assist customers during times of financial difficulty with requirements set out in the National Credit Code and the Banking Code<sup>26</sup> (including to assist a joint account holder experiencing financial difficulty without involving the other person initially, if requested<sup>27</sup>).

In addition, banks should:

- Recognise that financial hardship can be caused by family and domestic violence including a person leaving an abusive relationship.
- Ensure policies regarding the assessment of a hardship request involving joint borrowers are clear and appropriate. For example:
  - Not requiring the customer to contact or obtain consent or information from the co-borrower/s, when the bank is aware of family and domestic violence.
  - Being aware that reluctance to obtain consent from a co-borrower in relation to a hardship request may indicate family and domestic violence.
- Not require an intervention order as evidence of family and domestic violence when assessing a financial hardship application (customers can give verbal and written hardship notices under the law).
- Fast track hardship requests where family and domestic violence has been disclosed as an issue, recognising that in some cases the statutory timeframe for responding to a hardship request (21 days) may create additional stress and safety concerns for their customer.
- Recognise that in many cases customers will require more time, or alternative arrangements, to manage the debt, including:
  - Longer-term arrangements such as capitalisation of arrears and other reasonable variations, as well as moratoriums, interest or fee waivers, reductions, and new repayment plans.
  - More flexible arrangements for managing joint debts.
  - Debt waivers for small amounts of unsecured credit where the customer has not received a benefit or is experiencing significant financial difficulty.
- Provide customers with ongoing assistance and case management. For example, banks should speak regularly to their customers to ensure the hardship arrangement remains relevant for their situation, or whether other arrangements may be more appropriate.

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<sup>26</sup> The Banking Code, Part 9

<sup>27</sup> The Banking Code clause 159

## 4.10 Collections arrangements

Where a bank is made aware that a customer's debt involves family and domestic violence:

- The debt should not be sold onto a third-party debt collection agency.
- If the debt has already been sold to a third-party collection agency, and the bank becomes aware of the family and domestic violence, banks should work with the collections agency to provide the best outcome for the customer (which may include repurchasing the debt) assessed on a case-by-case basis.

Note, the Banking Code<sup>28</sup> requires that collection agents or representatives comply with the ACCC and ASIC Debt Collection Guidelines. In addition, banks should comply with the *ABA Industry Guidance: Sale of Unsecured Debt*<sup>29</sup>.

## 4.11 Understand the potential effect of credit reporting and default listing

Banks are aware of the potential effect of credit reporting on a customer's ability to re-establish financial independence. Banks have an obligation to provide accurate information if they are reporting credit, default information, or repayment history information to credit reporting bodies.

Banks will work with a customer to review their circumstances and should not enter negative credit information if a customer is affected by family and domestic violence, so far as the bank is able to avoid doing so under the law<sup>30</sup>.

Where the bank is aware of family and domestic violence and a formal hardship arrangement is in place, the credit report will not reflect missed repayments for the duration of the arrangement.

Banks are committed to exploring further ways to work with stakeholders on credit reporting for customers identified as being affected by family and domestic violence, to allow them to move forward.

## 4.12 A responsible approach to lending

Banks recognise they can help limit the potential impact of financial abuse on their customers.

The Banking Code<sup>31</sup> requires lenders to take a responsible approach to lending.

Part 5 of the Banking Code, outlines provisions for not approving a new loan, or an increase to a loan, where the co-borrower does not receive a substantial benefit unless the bank has taken reasonable steps to ensure the co-borrower/s understand the risks of the loan, why they want the loan, and are satisfied they are not experiencing financial abuse.

Banks should make all reasonable efforts to ensure all co-borrowers understand:

- Their liabilities, rights, and obligations under the arrangement.
- The different forms of signing authorities and the bank's position if a change is required later.

Where a bank suspects that financial abuse may be occurring, it should make further enquiries. For example, asking the customer questions (when they are alone, if it can be done safely), regarding their understanding of the lending transaction, and whether they are entering it of their own free will.

The bank retains its discretion to decline a loan application or to make changes to the loan.

Where there is evidence of unconscionable conduct, or other breaches, the bank will review the lending decision.

Banks should consider proactive measures to ensure that, over time, customers remain aware of their arrangements. For example, where possible, by providing visibility of:

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<sup>28</sup> The Banking Code chapter 43

<sup>29</sup> <https://www.ausbanking.org.au/wp-content/uploads/2019/11/Industry-Guideline-on-the-Sale-of-Unsecured-Debt-November-2019.pdf>

<sup>30</sup> Privacy Act 1988, *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill* 2019 (yet to be passed into legislation), and the *National Consumer Credit Protection Amendment (Mandatory Credit Reporting) Regulations* 2020

<sup>31</sup> The Banking Code clause 49



- Whether drawdowns may be made on the account.
- Whether one or more co-borrowers are required to approve transactions.
- How to change to two-to-sign and how that works.
- How to get account statements and correspondence separately.

#### 4.13 Provide appropriate employee training and awareness of policies

Bank training programs should focus on equipping employees, appropriate to their role, with the knowledge, skills, sensitivity, competencies, and information to help customers who may identify as being affected by family and domestic violence.

Training should include helping employees:

- Be aware of the prevalence and practical effects of family and domestic violence on a bank customer.
- Recognise the potential signs of financial abuse (refer **section 3.2**) and have an appropriate and sensitive conversation with a customer or refer the customer to a specialised area who can give further guidance (refer **section 4.2**).
- Understand the potential effect (positive and negative) that a bank's actions can have on a family and domestic violence situation.
- Understand the strict need for confidentiality, independence and respect for the customer's privacy.
- Understand the significant safety risks for those affected (including other family members) by family and domestic violence and the heightened safety risks at, and following, separation or return to the home.
- Understand the need for flexible arrangements and responses for customers affected by family and domestic violence.
- Understand the legal and procedural implications of court-issued family and domestic violence orders (refer to **Appendix 1** for a list of the relevant court orders in each jurisdiction across Australia).
- Have referral pathways and contacts for local support services to provide to a customer, where appropriate.
- Understand mandatory reporting requirement and processes.
- Understand the internal pathways for referring customers within the bank.
- Who may be emotionally affected by the experiences of customers.

Training should be relevant to the employee's role, for example:

- Frontline employees receive general information and instructions about internal procedures, and training on emergency procedures and how to escalate to a team leader, manager, or specialist area where a matter is sensitive and may require immediate assistance or further review.
- Specialised employees (e.g., dedicated frontline support teams, financial hardship, collections fraud investigation and complaints teams), managers and supervisors receive more detailed information, support, and training.
- Tailored training for non-customer facing teams (e.g., product, credit assessment) to raise awareness of financial abuse and how their actions could create, or exacerbate vulnerability.

Bank-wide training for all staff to understand family and domestic violence and how to support colleagues who may be affected, can be the first step for employees to understand the importance of customer focussed policies.

## 4.14 Raise customer awareness of policies and procedures

Banks can play a preventative role by educating customers about financial abuse and proactively encouraging customers to disclose family and domestic violence by promoting what bank support is available.

Banks should promote their family and domestic violence and financial hardship assistance to employees, customers, financial counsellors, community legal services, legal aid, and specialist support services. This may include:

- Guidelines and awareness-raising materials in multiple and accessible formats on financial abuse.
- Availability of financial hardship assistance and other support services that may help customers affected by family and domestic violence such as fact sheets, on-line information, and links to useful resources.
- Plain-English key information about the responsibilities of customers in relation to joint loans and accounts at key stages. For example, helping customers understand the concept of joint and several liability, and their sole liability for transactions made by any additional cardholders on their credit card accounts (at the application stage and when making changes to existing loans, hardship applications, and/or transaction disputes).

The banking industry commits to sharing information about the effectiveness of policies to support customers and employees so improvements can continue to be made across the industry.

## 4.15 Support bank employees who are affected by family and domestic violence

Like all employers, banks have an important role to support their employees who may be experiencing family and domestic violence. The experience of abuse can have serious effects on a person's psychological and physical health as well as their financial situation. A consequence of this may be a deterioration in an employee's attendance and/or performance at work. Maintaining employment and financial security can also help a person leave an abusive relationship and recover from the effects of the abuse.

Banks should articulate and promote internally their support policies and programs for employees who are affected by family and domestic violence including perpetrators of violence.

Banks should work with employee assistance programs to ensure they can provide support to employees affected by family and domestic violence, reflect the specific needs of the employee, and consider the nature of their role and the workplace environment.

Banks should ensure appropriate support for customer-facing staff who might be at risk of psychological affects as a result of dealing with customers experiencing family and domestic violence due to their personal circumstances. For example, bystander training, formal / informal debriefings, and care conversations such as R U Ok?

## 5. Where to go to for more information and support

### Emergency

In an emergency situation, victims, or those witnessing violence, should call the police on 000.

### Family violence support

**1800RESPECT** – A national family violence and sexual assault service 24 hours a day, 7 days a week. Tel 1800 737 732 [www.1800respect.org.au/](http://www.1800respect.org.au/)

**Family Relationship Advice Line** – Information and advice on family relationship issues and parenting arrangements after separation, 8am-8pm Monday to Friday, 10am-4pm Saturday. Tel 1800 050 321 <https://www.familyrelationships.gov.au/talk-someone/advice-line>

**Lifeline** – Provides crisis support services, 24 hours a day, 7 days a week. Tel 131 114 <https://www.lifeline.org.au/>

**Centrelink** – Provides payments, social work counselling and third-party referrals. Centrelink also provides crisis payments for victims of domestic violence or other extreme circumstance who have left their home and cannot return. [www.humanservices.gov.au](http://www.humanservices.gov.au)

### Legal support

**Legal Aid** – Can provide advice on intervention orders, family law and civil / credit and debt matters. Find a legal aid commission at [www.nationallegalaid.org/](http://www.nationallegalaid.org/)

**Community Legal Centres (CLC)** – Provides advice on AVOs, family law, and credit and debt / financial counselling and other generalist civil law advice. Find a local CLC at [www.naccl.org.au/](http://www.naccl.org.au/)

All these websites have a 'search for referral by postcode' function which directs clients to relevant local services.

**Women's Legal Service Australia** – Provides face-to-face legal advice through outreach services and runs a partnership to provide family law advice through Family Relationship Centres. [www.wlsa.org.au/](http://www.wlsa.org.au/) or [www.familyrelationships.gov.au/](http://www.familyrelationships.gov.au/)

### Finance and Debt issues

**National Debt Helpline**– You can talk to a free and independent financial counsellor from anywhere in Australia by ringing 1800 007 007 (minimum opening hours are 9.30am – 4.30pm Monday to Friday). <https://ndh.org.au/>

### Financial information

**MoneySmart** – You can get guidance on general financial matters as well as specific information on protecting your money and yourself from financial abuse. [www.moneysmart.gov.au/life-events-and-you/families/financial-abuse](http://www.moneysmart.gov.au/life-events-and-you/families/financial-abuse)

### Interpreter services

**Translating and Interpreting Service (TIS)** – Provides an interpreting service for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients. <https://www.tisnational.gov.au/en/About-TIS-National>

**The National Relay Service (NRS)** - an Australia-wide telephone access service available to customers who are deaf or have a hearing or speech impairment. 24 hours a day, 7 days a week. Voice –1300 555 727 TTY –133 677 SMS –0423 677 767, <https://www.communications.gov.au/what-we-do/phone/services-people->

**Complaints** - Australian Financial Complaints Authority (AFCA) - an independent free and accessible dispute resolution service for consumers, without going to court. Available after the complaint has been formally raised with the bank and not satisfactorily resolved. Decisions are binding on the bank.

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***(Version 2.0)***

## Appendix 1: Family and domestic violence intervention orders

A family and domestic violence order (including an interim order) is generally made under a prescribed law of a state or territory to protect a person from family and domestic violence.

Intervention orders are civil orders that offer protection from family and domestic violence. A civil order means it is not counted as a criminal offence; therefore, the person will not have a criminal record. There can, however, be related criminal charges if, for example the perpetrator is simultaneously charged with assault.

The court can make an intervention order that stops someone from having contact with a protected person, or one that allows contact but prohibits abuse and violence.

If any of the conditions of the order are breached (e.g., violence or contact with a protected person when this is forbidden), the offender can be charged with a breach of the order, which is a crime. The person will be required to attend court because of the breach, and this may result in a criminal conviction.

Bank employees need to understand the implications of a court and/or police issued intervention order, family and domestic violence orders, safety order or equivalent, and recognise what this means when dealing with customer accounts. For example, banks should not require a customer to communicate directly with an ex-partner and ensure the bank takes responsibility for separate communication. Bank staff should also be aware if a customer has not obtained an intervention order no assumptions should be made about whether the customer is experiencing FDV.

The following table provides a list of the relevant court orders for each jurisdiction across Australia.

Jurisdiction	Instrument	Relevant legislation
<b>Australian Capital Territory</b>	Domestic Violence Order	Domestic Violence and Protection Act 2008
<b>New South Wales</b>	Apprehended Domestic Violence Orders	Crimes (Domestic and Personal Violence) Act 2007
<b>Northern Territory</b>	Domestic Violence Order	Domestic and Family Violence Act 2007
<b>Queensland</b>	Protection Orders	Domestic and Family Violence Protection Act 2012
<b>South Australia</b>	Intervention Orders	Intervention Orders (Prevention of Abuse) Act 2009
<b>Tasmania</b>	Family Violence Order	Family Violence Act 2004
<b>Victoria</b>	Intervention Orders	Family Violence Protection Act 2008
<b>Western Australia</b>	Violence Restraining Orders	Restraining Orders Act 1997

## Appendix 2: Family and domestic violence reporting obligations

In New South Wales and the Northern Territory, banks and their employees, or others in relationships analogous to employment, owe a duty to report instances of family and domestic violence to police as follows:

Jurisdiction	Requirement	Relevant legislation
New South Wales	Report information that might be of material assistance to securing the apprehension, prosecution or conviction of offender who has committed a 'serious indictable offence'.	S316(1) of the Crimes Act 1900 (NSW)
Northern Territory	Report if you believe on reasonable grounds that a person is likely to cause or has caused harm to another person in a domestic relationship, or that person's safety is in serious or imminent threat because of family and domestic violence	S 124A of the Domestic and Family Violence Act 2007(NT)